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8 Attorneys for Plaintiff  
9 NATIONWIDE MUTUAL INSURANCE COMPANY  
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12 UNITED STATES DISTRICT COURT  
13 NORTHERN DISTRICT OF CALIFORNIA  
14 SAN FRANCISCO DIVISION

15 NATIONWIDE MUTUAL INSURANCE  
16 COMPANY,  
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## RECITALS

WHEREAS:

On or about August 29, 2003, Alexander Holton was involved in a single-car automobile accident near Fort Bragg, California. As a result of the accident, both of the passengers in the vehicle driven by Alexander Holton, Jamie Westoby and Nicholas Raphael were killed.

Defendant State Farm ***Mutual*** Automobile Insurance Company (“State Farm Mutual”) issued an automobile liability insurance policy to Alexander Holton that was in effect at the time of the accident (the “State Farm automobile liability policy”).

State Farm **General** Insurance Company (“State Farm General”), who was not named as a party to this case, issued a personal umbrella policy to John Holton, Alexander Holton’s father, that was in effect at the time of the accident (the “State Farm personal umbrella policy”).

Plaintiff Nationwide Mutual Insurance Company (“Nationwide”) issued personal umbrella insurance policy number PA 7801196226 to John and Nancy Dickmeyer (Alexander Holton’s mother), that was in effect at the time of the accident (the “Nationwide personal umbrella policy”).

John and Lynn Westoby (the parents of Jamie Westoby) and Marie and Ray Raphael (the parents of Nicholas Raphael) have asserted that liability coverage is afforded for the death of Jamie Westoby and Ray Raphael under (1) the State Farm automobile liability policy; (2) the State Farm personal umbrella policy; and (3) the Nationwide personal umbrella policy.

On November 19, 2004, plaintiff Nationwide filed its complaint in this action seeking, *inter alia*, declaratory relief concerning its rights and obligations under the Nationwide policy, and the rights and obligations of plaintiffs Alexander Holton, John Westoby, Lynn Westoby, Marie Raphael, Ray Raphael, and State Farm Mutual. At the time of the filing of its complaint, Nationwide understood that State Farm Mutual issued the personal umbrella policy which was actually issued by State Farm **General**.

On February 17, 2005, State Farm Mutual answered Nationwide's complaint, admitting, *inter alia*, that State Farm Mutual issued the State Farm personal umbrella policy. This admission was an error, as instead, State Farm **General** issued the State Farm personal umbrella

1 policy.

2 In late February 2005, State Farm Mutual and State Farm General agreed to pay the full  
 3 policy limits of the State Farm automobile liability policy (\$200,000) and the State Farm  
 4 personal umbrella policy (\$2,000,000) to the Westobys and Raphaels in exchange for the  
 5 Westobys and Raphaels' agreement to enter into a covenant not to execute against Alexander  
 6 Holton.

7 It was not until after a copy of this settlement agreement was provided to counsel for  
 8 Nationwide that it discovered that it was State Farm General, not State Farm Mutual, who issued  
 9 the State Farm personal umbrella policy.

10 State Farm General contends that it is entitled to equitable contribution from Nationwide  
 11 in this matter, in the event that it is adjudicated in this case that coverage exists for the claims of  
 12 the Westobys and Raphaels under the Nationwide personal umbrella policy, and/or a settlement  
 13 is reached as between these parties.

14 There is no dispute between Nationwide and State Farm Mutual, who does not contend  
 15 that it is entitled to equitable contribution from Nationwide. Instead, the only possible dispute  
 16 between insurance carriers is between Nationwide and State Farm **General**, who should have  
 17 been named as a defendant in this action, instead of State Farm Mutual. As such, Nationwide  
 18 intends to file a First Amended Complaint to correctly name State Farm General as a defendant  
 19 in this action, and delete State Farm Mutual as a defendant.

20 The filing of this First Amended Complaint will not impact any of the current deadlines  
 21 or the trial date in this action, and the parties believe that it will promote judicial economy to  
 22 resolve all claims relating to the Nationwide personal umbrella policy in this action.

23 **STIPULATION**

24 It is hereby stipulated by State Farm Mutual, State Farm General, Alexander Holton,  
 25 John Westoby, Lynn Westoby, Marie Raphael, Ray Raphael, and Nationwide, by and through  
 26 their respective counsel of record, that Nationwide shall be permitted to file the First Amended  
 27 Complaint in the form attached hereto as Exhibit A.

28 It is further stipulated that the filing of the First Amended Complaint shall not impact in

1 any way the current case management or trial deadlines, nor shall it impact the trial date.

2 IT IS SO STIPULATED.

3 Dated: June 21, 2005

4 LONG & LEVIT LLP

5 By: 

6 KAREN L. UNO  
7 DAVID P. BOROVSKY  
8 Attorneys for Plaintiff, NATIONWIDE  
9 MUTUAL INSURANCE COMPANY

10 Dated: June \_\_, 2005

11 HAYES, DAVIS, ELLINGSON, MCCLAY &  
12 SCOTT

13 By:

14 STEPHEN M. HAYES  
15 RICHARD A. DANA  
16 Attorneys for Defendant, STATE FARM  
17 MUTUAL AUTOMOBILE INSURANCE  
18 COMPANY and STATE FARM GENERAL  
19 INSURANCE COMPANY

20 Dated: June \_\_, 2005

21 ABBEY, WIETZENBERG, WARREN, & EMERY

22 By:

23 PATRICK W. EMERY  
24 Attorneys for Defendants  
25 JOHN WESTOBY and LYNN WESTOBY

26 Dated: June \_\_, 2005

27 BAUM & BLAKE

28 By:

DAVID B. BAUM  
Attorneys for Defendants  
MARIE RAPHAEL and RAY RAPHAEL

29 Dated: June \_\_, 2005

30 COLLINS, TOSCHI & DOYLE

31 By:

32 WAYNE M. COLLINS  
33 Attorneys for Defendant  
34 ALEXANDER HOLTON

1 any way the current case management or trial deadlines, nor shall it impact the trial date.

2 IT IS SO STIPULATED.

3 Dated: June \_\_, 2005

LONG & LEVIT LLP

4 By:

5 KAREN L. UNO  
6 DAVID P. BOROVSKY  
7 Attorneys for Plaintiff, NATIONWIDE  
8 MUTUAL INSURANCE COMPANY

9 Dated: June \_\_, 2005

10 HAYES, DAVIS, ELLINGSON, MCCLAY &  
11 SCOTT

12 By: 

13 STEPHEN M. HAYES  
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15 Attorneys for Defendant, STATE FARM  
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17 COMPANY and STATE FARM GENERAL  
18 INSURANCE COMPANY

19 Dated: June \_\_, 2005

20 ABBEY, WIETZENBERG, WARREN, & EMERY

21 By:

22 PATRICK W. EMERY  
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24 JOHN WESTOBY and LYNN WESTOBY

25 Dated: June \_\_, 2005

26 BAUM & BLAKE

27 By:

28 DAVID B. BAUM  
Attorneys for Defendants  
MARIE RAPHAEL and RAY RAPHAEL

29 Dated: June \_\_, 2005

30 COLLINS, TOSCHI & DOYLE

31 By:

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33 Attorneys for Defendant  
34 ALEXANDER HOLTON

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2 IT IS SO STIPULATED.

3 Dated: June \_\_, 2005

LONG & LEVIT LLP

5 By:

KAREN L. UNO  
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Attorneys for Plaintiff, NATIONWIDE  
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8 Dated: June \_\_, 2005

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SCOTT

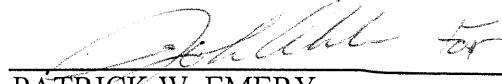
10 By:

STEPHEN M. HAYES  
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MUTUAL AUTOMOBILE INSURANCE  
COMPANY and STATE FARM GENERAL  
INSURANCE COMPANY

14 Dated: June 7<sup>th</sup>, 2005

ABBEY, WIETZENBERG, WARREN, & EMERY

16 By:

  
PATRICK W. EMERY  
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18 Dated: June \_\_, 2005

BAUM & BLAKE

20 By:

DAVID B. BAUM  
Attorneys for Defendants  
MARIE RAPHAEL and RAY RAPHAEL

23 Dated: June \_\_, 2005

COLLINS, TOSCHI & DOYLE

25 By:

WAYNE M. COLLINS  
Attorneys for Defendant  
ALEXANDER HOLTON

1 any way the current case management or trial deadlines, nor shall it impact the trial date.

2 IT IS SO STIPULATED.

3 Dated: June \_\_, 2005

LONG & LEVIT LLP.

5 By:

KAREN L. UNO  
DAVID P. BOROVSKY  
Attorneys for Plaintiff, NATIONWIDE  
MUTUAL INSURANCE COMPANY

8 Dated: June \_\_, 2005

HAYES, DAVIS, ELLINGSON, MCCLAY &  
SCOTT

10 By:

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RICHARD A. DANA  
Attorneys for Defendant, STATE FARM  
MUTUAL AUTOMOBILE INSURANCE  
COMPANY and STATE FARM GENERAL  
INSURANCE COMPANY

14 Dated: June \_\_, 2005

ABBEY, WIETZENBERG, WARREN, & EMERY

16 By:

PATRICK W. EMERY  
Attorneys for Defendants  
JOHN WESTOBY and LYNN WESTOBY

18 Dated: June 7, 2005

19 BAUM & BLAKE

20 By:

DAVID B. BAUM  
Attorneys for Defendants  
MARIE RAPHAEL and RAY RAPHAEL

23 Dated: June \_\_, 2005

24 COLLINS, TOSCHI & DOYLE

25 By:

WAYNE M. COLLINS  
Attorneys for Defendant  
ALEXANDER HOLTON

1 any way the current case management or trial deadlines, nor shall it impact the trial date.

2 IT IS SO STIPULATED.

3 Dated: June \_\_, 2005

LONG & LEVIT LLP

4 By:

5 KAREN L. UNO  
6 DAVID P. BOROVSKY  
7 Attorneys for Plaintiff, NATIONWIDE  
8 MUTUAL INSURANCE COMPANY

9 Dated: June \_\_, 2005

10 HAYES, DAVIS, ELLINGSON, MCCLAY &  
11 SCOTT

12 By:

13 STEPHEN M. HAYES  
14 RICHARD A. DANA  
15 Attorneys for Defendant, STATE FARM  
16 MUTUAL AUTOMOBILE INSURANCE  
17 COMPANY and STATE FARM GENERAL  
18 INSURANCE COMPANY

19 Dated: June \_\_, 2005

20 ABBEY, WIETZENBERG, WARREN, & EMERY

21 By:

22 PATRICK W. EMERY  
23 Attorneys for Defendants  
24 JOHN WESTOBY and LYNN WESTOBY

25 Dated: June \_\_, 2005

26 BAUM & BLAKE

27 By:

28 DAVID B. BAUM  
Attorneys for Defendants  
MARIE RAPHAEL and RAY RAPHAEL

29 Dated: June \_\_, 2005

30 COLLINS, TOSCHI & DOYLE

31 By:

32 WAYNE M. COLLINS  
33 Attorneys for Defendant  
34 ALEXANDER HOLTON

1 **ORDER**

2 FOR GOOD CAUSE APPEARING the Court finds that Nationwide may file the First  
3 Amended Complaint attached to the stipulation as Exhibit A. The currently scheduled pretrial  
4 deadlines and trial date shall remain unchanged.

5  
6 PURSUANT TO STIPULATION, IT IS SO ORDERED.

7  
8 Dated: July 1, 2005



9  
10 By:

11 THE HONORABLE MAXINE M. CHESNEY  
12 UNITED STATES DISTRICT COURT JUDGE

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